

TIMOTHY SEYMOUR 30(b)(6)
BILENKY vs. RYOBI

August 22, 2014

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| <p>1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION 3 4 STEPHEN E. BILENKY, 5 Administrator of the 6 Estate of Frank S. Wright, 7 deceased, CIVIL NO. 2:13CV345 8 Plaintiff, 9 vs. 10 RYOBI, LTD., et al., 11 Defendants. 12 ~~~~~ 13 14 VIDEOTAPED DEPOSITION OF 15 TIMOTHY DANIEL SEYMOUR 16 AS CORPORATE REPRESENTATIVE OF HOME DEPOT 17 18 August 22, 2014 19 20 8:05 a.m. 21 22 3353 Peachtree Road, N.E. 23 Atlanta, Georgia 24 25 Deborah P. Longoria, CCR B-1557, RPR</p> | <p>1 INDEX TO EXAMINATIONS 2 WITNESS: Timothy Daniel Seymour as Corporate 3 Representative of Home Depot 4 5 Cross-Examination by Mr. Shapiro 6 Continued Cross-Examination, on video, 7 by Mr. Shapiro 8 9 INDEX TO EXHIBITS 10 Plaintiff's 11 Exhibit Description Page 12 1 Deposition Notice 13 13 2 Sales Receipt 17 14 3 First Page Ryobi Product Manual 15 HDK19H42 18 16 4 Picture, Exemplar Ryobi Mower 20 17 5 Picture, Subject Mower Post Fire 40 18 6 Picture, Back Yard 40 19 7 Picture, Mr. Wright 41 20 8 CPSC 11/16/01 Recall Notice 48 21 9 CPSC 12/6/04 Recall Notice 50 22 10 December 2004 Recall Notice Highlighted 50 23 11 CPSC 7/11/06 Recall Notice 54 24 12 CPSC July 2006 Recall Notice 25 Highlighted 57 26 13 Pictures, Original Tank, Updated Tank 57</p> |
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| <p>1 APPEARANCES 2 On behalf of the Plaintiff: 3 SHAPIRO LEWIS APPLETON & DUFFAN, P.C. 4 RICHARD N. SHAPIRO, ESQ. 5 1294 Diamond Springs Road 6 Virginia Beach, Virginia 23455 7 757.460.7776 8 Rshapiro@hsinjurylaw.com 9 On behalf of the Defendants: 10 DICKIE, MCCAMEY & CHILCOTE, P.C. 11 DOUGLAS M. GRIMSLEY, ESQ. 12 Two PPG Place 13 Suite 400 14 Pittsburgh, Pennsylvania 15222-5402 15 412.392.5420 16 Dgrimsley@dmclaw.com; kwhite@dmclaw.com 17 18 Also Present: 19 George Bush, Videographer 20 Jonathan White, Assistant General Counsel, 21 Home Depot 22 23 24 25</p> | <p>1 14 Picture re "Fuel line is clamped 2 here" 59 3 4 15 Picture re "Husqvarna calls these 5 'barbs'" 60 6 16 Picture re "Barb on replacement fuel 7 tank" 60 8 17 Picture re "Tank barb comparison" 61 9 10 (Photocopies of Exhibits 1 through 17 have been 11 attached to the original transcript, the originals 12 having been returned to Mr. Shapiro.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p> |

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| <p style="text-align: right;">Page 5</p> <p>1 Videotaped Deposition of 2 Timothy Daniel Seymour 3 as Corporate Representative of Home Depot 4 August 22, 2014 5 (Reporter disclosure made pursuant to Article 6 8.B. of the Rules and Regulations of the Board of 7 Court Reporting of the Judicial Council of Georgia.) 8 TIMOTHY DANIEL SEYMOUR, 9 having been first duly sworn or affirmed, testifies 10 as follows: 11 CROSS-EXAMINATION 12 BY MR. SHAPIRO: 13 Q. Could you please state your full name, 14 sir. 15 A. My name is Timothy Daniel Seymour. 16 Q. And what is your business address? 17 A. Geez. Paces Ferry Drive -- 18 THE WITNESS: What is it, John? 3 -- 19 MR. WHITE: Paces Ferry Road. 20 THE WITNESS: Yeah, Paces Ferry Road. But 21 what's the street number? 22 MR. WHITE: 2455. 23 THE WITNESS: 2455 Paces Ferry Road, 24 Atlanta, Georgia. 25 Q. (By Mr. Shapiro) And what is your title</p> | <p style="text-align: right;">Page 7</p> <p>1 No. 10, 11. We asked for the total number of units 2 and revenue received from the sale of all 3 Ryobi-branded lawn tractors for the years 2003 4 through 2010. 5 Did you make inquiry whether there were 6 sales records for Ryobi tractors in any of those 7 years? 8 A. I did. 9 Q. Okay. And what did you find out? 10 A. So we don't have sales records that go 11 back that far into the past. So we keep -- because 12 you're talking about store SKU-level sales data, 13 that's five years' worth of history, so I can go back 14 till I guess it's about '09. There's no record of 15 Ryobi tractors from '09 forward, and there wasn't any 16 record -- I don't have any way to access anything 17 prior to that at the product level SKU levels of what 18 we use. 19 Q. Okay. So Ryobi-branded lawn tractors were 20 not being sold as of 2009 and later? 21 A. Correct. 22 Q. Okay. In what calendar years do you 23 believe Ryobi lawn tractors were sold by Home Depot 24 USA? 25 A. Based on what I've heard through this,</p> |
| <p style="text-align: right;">Page 6</p> <p>1 with HD? 2 A. I'm a merchant for outdoor power 3 equipment. 4 Q. How long have you been in that position, 5 approximately? 6 A. I've been in that position for three 7 years. 8 Q. Okay. And were you with Home Depot before 9 that in a different role? 10 A. Yes. 11 Q. How long or what role were you in -- 12 A. I've been at Home Depot for nine years. 13 Q. Beginning in what year would that be? 14 A. Beginning in 2005. 15 Q. Okay. We're not on the video yet because 16 before I start the video, I wanted to ask a few 17 things about the deposition notice so we wouldn't be 18 fumbling around and asking questions that were a 19 waste of everyone's time. 20 But this is the deposition notice. And 21 one of the things I had a question about was -- there 22 are a number of paragraphs here; I think they're one 23 through 13. And under the specific ones I'm 24 concerned about, because I didn't see any paper 25 produced by the attorneys on the case, has to do with</p> | <p style="text-align: right;">Page 8</p> <p>1 sometime around 2005, 2006. 2 Q. Was about the last year? 3 A. Yes. 4 Q. When did Home Depot start selling Ryobi 5 lawn tractors; do you have an idea? 6 A. I don't know. Again, I believe 2005. 7 Q. So only a year or two? 8 A. My understanding is yes. 9 Q. So based on your investigation, there 10 weren't any sales of Ryobi lawn tractors after 2006? 11 A. Correct. 12 Q. Now, Ryobi is sort of like a captive brand 13 for Home Depot, isn't it? Is it sold by anyone else 14 in the United States except Home Depot outlets? 15 A. I'm not aware of it being sold by anybody 16 other than Home Depot. 17 Q. So do you have any understanding of how 18 long the Ryobi brand has been sold in Home Depot 19 stores, going outside lawn tractors? 20 MR. GRIMSLEY: Objection to form. 21 Objection to relevance. 22 THE WITNESS: I believe it has been a -- 23 it's been as long as I have been part of the 24 company, and it may well predate that. 25 Q. (By Mr. Shapiro) Did you -- and you told</p> |

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| <p style="text-align: right;">Page 9</p> <p>1 me earlier that for before 2009 you didn't have 2 access to any of the sales records? 3 A. It's not access. I don't believe that we 4 keep records at a product level that far back, and I 5 have not found any in my searching for them. 6 Q. Okay. And the same question preliminarily 7 about warranty claims. So we're looking at a couple 8 year period of somewhere in 2005 and 2006. You don't 9 have any access to any warranty claims relating to 10 those sales? 11 MR. GRIMSLEY: Objection to form. 12 THE WITNESS: So warranty claims would go 13 to the manufacturer, would not process through 14 the Home Depot. 15 Q. (By Mr. Shapiro) You send all those back 16 to the manufacturers of products? 17 A. We wouldn't even get a warranty claim. We 18 would direct the customer/claimant to the 19 manufacturer. 20 Q. If the person walks in the store and wants 21 to make the claim, do Home Depot reps ever do 22 anything to process it or to notify the manufacturer, 23 for example? 24 A. No. We don't have any kind of mechanism 25 or process to do that. We would -- we would try to</p> | <p style="text-align: right;">Page 11</p> <p>1 that for five years. In the databases I'm familiar 2 with, it doesn't exist back in 2005, 2006. 3 MR. SHAPIRO: Okay. I just wanted to get 4 that information before we went on the video so 5 I didn't clog the thing up with some questions 6 there. So let's go ahead and we'll start the 7 video deposition, okay, if that's all right with 8 you. 9 We'll swear him in again, which will be 10 part of the deposition record before we go on 11 video. 12 (Discussion off the record.) 13 THE VIDEOGRAPHER: We'll go on the record 14 here. 15 This is the beginning of Video 1 in the 16 30(b)(6) deposition of Tim Seymour, corporate 17 representative of Home Depot USA, Inc. 18 Today's date is August 22nd, 2014. And 19 the time is 8:13 a.m. 20 Would counsel present please identify 21 themselves and state who they represent. 22 MR. SHAPIRO: Rick Shapiro, one of the 23 attorneys representing the estate. 24 MR. GRIMSLEY: Douglas Grimsley for 25 defendants.</p> |
| <p style="text-align: right;">Page 10</p> <p>1 connect the customer to the manufacturer through a 2 phone number. So the store would try to look up the 3 phone number, like call us to try to find the phone 4 number, that kind of thing. 5 Q. What about -- I mean under this topic of 6 warranty claims, what about returns; when the 7 customer actually brings the product, which is a form 8 of a warranty claim, when they bring the product in 9 and say, I want to return this, it's not working? 10 MR. GRIMSLEY: Objection to form. 11 THE WITNESS: I mean, Home Depot does 12 accept returns on products under certain 13 circumstances, yes. 14 Q. (By Mr. Shapiro) So if that -- that's not 15 an easy thing to do with a lawn tractor, of course. 16 You don't just show up and say, Take it back. 17 Would you have any access to that data in 18 2005 and 2006, even if -- 19 A. So it's the same kind of data, right? So 20 it's -- it would be -- it would show up to us as 21 effectively a negative sale, right? So it's a return 22 from the customer; we refund the customer's money; we 23 take the tractor back. That -- that is store-SKUed 24 day-level data, and so you start to extrapolate that 25 out. Again, that's kind of what we -- we would hold</p> | <p style="text-align: right;">Page 12</p> <p>1 THE VIDEOGRAPHER: And would the court 2 reporter please swear in the witness. 3 TIMOTHY DANIEL SEYMOUR, 4 having been duly sworn or affirmed, again for video 5 record, testifies as follows: 6 CONTINUED CROSS-EXAMINATION 7 BY MR. SHAPIRO: 8 Q. Good morning, sir. 9 A. Morning. 10 Q. My name is Rick Shapiro. I'm one of the 11 attorneys representing the estate in the case. 12 Can you please state your full name for 13 the jury. 14 A. Sure. My name is Timothy Daniel Seymour. 15 Q. And you are employed with Home Depot USA 16 in the Atlanta area, correct? 17 A. Yes. 18 Q. And what is your title, Mr. Seymour? 19 A. I'm a merchant for outdoor power 20 equipment. 21 Q. And you're appearing today on August 22nd, 22 2014, for a deposition here. And do you understand 23 that lawyers call this a company representative 24 deposition where you're appearing on behalf of Home 25 Depot on certain topics today?</p> |

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| <p style="text-align: right;">Page 13</p> <p>1 A. Yes.</p> <p>2 Q. And appearing as a company representative,</p> <p>3 have you had an opportunity to talk to at least one</p> <p>4 of the lawyers representing Home Depot about the</p> <p>5 nature of this deposition today?</p> <p>6 A. Yes.</p> <p>7 (Plaintiff's Exhibit-1 was marked for</p> <p>8 identification.)</p> <p>9 Q. (By Mr. Shapiro) And there were certain</p> <p>10 topics in a deposition notice, which you have in</p> <p>11 front of you and I'm marking as Exhibit 1, and you</p> <p>12 had an opportunity to look at some of the topics that</p> <p>13 were the subjects for today's deposition?</p> <p>14 A. Yes.</p> <p>15 Q. And in some of these types of depositions,</p> <p>16 I actually read the question and we go one by one,</p> <p>17 but I don't think that would be the way to go today.</p> <p>18 But in general, so the jury understands</p> <p>19 where I'm going and what this is about, we're going</p> <p>20 to talk about Ryobi lawn tractors today, and some of</p> <p>21 the questions are going to be regarding sales of</p> <p>22 Ryobi lawn tractors.</p> <p>23 Do you understand that?</p> <p>24 A. Yes.</p> <p>25 Q. And I'm going to have some questions about</p> | <p style="text-align: right;">Page 15</p> <p>1 Did you make inquiry about Ryobi lawn</p> <p>2 tractors of the make and model that are the subject</p> <p>3 of this case?</p> <p>4 A. When you say made inquiry, can you</p> <p>5 describe what you mean?</p> <p>6 Q. Did you look into company records about</p> <p>7 this?</p> <p>8 A. I looked into what I had available in the</p> <p>9 offices that -- where I sit and where previous</p> <p>10 merchants in this category have sat. I looked on our</p> <p>11 shared drive to understand what documents may exist</p> <p>12 around the Ryobi tractor, yes.</p> <p>13 Q. Okay. And can you tell the jury about</p> <p>14 your title and what your responsibilities are now.</p> <p>15 A. I'm a category manager for outdoor power</p> <p>16 equipment. I have responsibility for riding lawn</p> <p>17 equipment as well as other large engine equipment,</p> <p>18 like snow blowers and log splitters and things of</p> <p>19 that nature. And my job is to help determine</p> <p>20 products at the Home Depot and how we go bring them</p> <p>21 to market from a retail positioning standpoint.</p> <p>22 Q. And give me your title one more time.</p> <p>23 A. Sure. I'm a category merchant for outdoor</p> <p>24 power equipment.</p> <p>25 Q. Okay. And does that involve going to</p> |
| <p style="text-align: right;">Page 14</p> <p>1 warranty types of things.</p> <p>2 Do you understand that?</p> <p>3 MR. GRIMSLEY: Objection to form.</p> <p>4 THE WITNESS: Yes. When you say --</p> <p>5 Q. (By Mr. Shapiro) That means it's a</p> <p>6 subject on the notice?</p> <p>7 A. Correct. Yes.</p> <p>8 Q. Okay. And there are some subjects on the</p> <p>9 notice about recall questions?</p> <p>10 A. Yes.</p> <p>11 Q. And whether there were warnings about some</p> <p>12 of the problems or hazards with Ryobi lawn</p> <p>13 tractors --</p> <p>14 MR. GRIMSLEY: Objection to form.</p> <p>15 Q. (By Mr. Shapiro) -- is one of the</p> <p>16 subjects?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, in looking at these subjects</p> <p>19 and conferring with the lawyers, did you do any</p> <p>20 investigation of the subjects?</p> <p>21 A. I did.</p> <p>22 Q. All right. And for example, there's</p> <p>23 subjects about the design and manufacture of Ryobi</p> <p>24 lawn tractors of the nature that are in this case</p> <p>25 that the plaintiff has brought.</p> | <p style="text-align: right;">Page 16</p> <p>1 trade shows?</p> <p>2 A. Occasionally.</p> <p>3 Q. Okay. And as far as your preparation for</p> <p>4 today, did you review any other depositions of any</p> <p>5 other witnesses?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did you review any reports of any</p> <p>8 expert witnesses?</p> <p>9 A. No.</p> <p>10 Q. Did you look at any pictures? For</p> <p>11 example, did you see pictures of the Ryobi lawn</p> <p>12 tractor that's the subject of the case?</p> <p>13 A. No.</p> <p>14 Q. Okay. We may show you a couple.</p> <p>15 Now, we briefly spoke before we were on</p> <p>16 the video deposition about a couple questions I had.</p> <p>17 And is it true that you told me that Ryobi</p> <p>18 lawn tractors were only sold for a year or two in</p> <p>19 Home Depot stores in the United States?</p> <p>20 A. That's my understanding.</p> <p>21 Q. In what years do you believe those were</p> <p>22 sold, sir?</p> <p>23 A. 2005, 2006, that time frame.</p> <p>24 Q. And you also told me that Ryobi as a</p> <p>25 brand, there are other tools and products sold in</p> |

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| <p style="text-align: right;">Page 17</p> <p>1 Home Depot stores besides lawn tractors, right?</p> <p>2 A. Yes.</p> <p>3 Q. And the sales of those other brands of</p> <p>4 Ryobi products predated sales of lawn tractors and</p> <p>5 have continued since 2006 also?</p> <p>6 A. Have certainly continued since. I believe</p> <p>7 but I'm not a hundred percent sure that they</p> <p>8 predated.</p> <p>9 Q. Okay. And so it would be fair to say that</p> <p>10 during the sales of the Ryobi lawn tractors in the</p> <p>11 '05-06 time frame, you were not the product category</p> <p>12 manager -- I'm messing up your title, I know, but</p> <p>13 roll with me on that.</p> <p>14 A. Yeah. Merchant. No problem.</p> <p>15 Q. -- but you were with Home Depot, I think</p> <p>16 you told me, in another capacity, right?</p> <p>17 A. I started at the company in 2005.</p> <p>18 Q. Thank you. In what type of thing -- were</p> <p>19 you in that category then or a different category?</p> <p>20 A. No, I wasn't actually involved in category</p> <p>21 management at that point. I was -- I started in the</p> <p>22 company in strategic business development.</p> <p>23 Q. Okay. So, let's see. One moment.</p> <p>24 (Plaintiff's Exhibit-2 was marked for</p> <p>25 identification.)</p> | <p style="text-align: right;">Page 19</p> <p>1 cover page and it has the words "Ryobi" on it.</p> <p>2 And does this appear to be a cover page of</p> <p>3 a product manual that matches with the sale that I</p> <p>4 just showed you under No. 2 for a Ryobi lawn tractor?</p> <p>5 A. It appears to be the cover manual of a</p> <p>6 Ryobi lawn tractor. Whether it's the specific model</p> <p>7 that matches what was sold, I don't know if I could</p> <p>8 know from this.</p> <p>9 Q. Okay. You don't have any reason to think</p> <p>10 it's not, do you?</p> <p>11 A. I don't have any reason to think it's not.</p> <p>12 MR. GRIMSLEY: Objection to form.</p> <p>13 Q. (By Mr. Shapiro) Okay. And were you</p> <p>14 generally familiar with the fact that Mr. Wright had</p> <p>15 a fire on a lawn tractor on December 23rd, 2010, in</p> <p>16 the backyard of his home in Chesapeake, Virginia?</p> <p>17 A. Yes. I heard that through this process.</p> <p>18 Q. Okay. And as it shows on the product</p> <p>19 manual, it had a model name or number HDK19H42?</p> <p>20 A. Yes.</p> <p>21 Q. The next exhibit I'd like to show you --</p> <p>22 MR. GRIMSLEY: Richard, I just want to</p> <p>23 interpose an objection. If this is a picture of</p> <p>24 an exemplar --</p> <p>25 MR. SHAPIRO: Yes.</p> |
| <p style="text-align: right;">Page 18</p> <p>1 Q. (By Mr. Shapiro) I'm going to mark as</p> <p>2 No. 2 a document that is a sales receipt and ask you</p> <p>3 if this looks to be the sales receipt of a Ryobi lawn</p> <p>4 tractor to Frank Wright, who is the decedent that the</p> <p>5 estate is representing in this case.</p> <p>6 Have you seen this before?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And it -- does it seem that</p> <p>9 Mr. Wright purchased a Ryobi lawn mower, it's got a</p> <p>10 SKU or a reference number here --</p> <p>11 A. Yeah.</p> <p>12 Q. -- in September 2005 from the North</p> <p>13 Military Highway Home Depot store?</p> <p>14 A. Yes.</p> <p>15 Q. And I think it shows here it was about a</p> <p>16 thousand dollars, and he paid, I guess, \$59 to have</p> <p>17 it delivered to his Chesapeake, Virginia, residence,</p> <p>18 it looks like?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Done with that. Flip this over</p> <p>21 here.</p> <p>22 (Plaintiff's Exhibit-3 was marked for</p> <p>23 identification.)</p> <p>24 Q. (By Mr. Shapiro) And I'm showing you a</p> <p>25 document I'm marking as Exhibit 3, which is a single</p> | <p style="text-align: right;">Page 20</p> <p>1 MR. GRIMSLEY: -- that does not match the</p> <p>2 model number of the decedent's mower, then I'd</p> <p>3 just like a continuing objection. I'm not going</p> <p>4 to object every time, but I want it on the</p> <p>5 record that we object to the extent this is not</p> <p>6 the same model.</p> <p>7 MR. SHAPIRO: Right.</p> <p>8 (Plaintiff's Exhibit-4 was marked for</p> <p>9 identification.)</p> <p>10 Q. (By Mr. Shapiro) Does this appear to be</p> <p>11 an exemplar, or by exemplar, I mean a picture of a</p> <p>12 Ryobi lawn tractor of a similar type to the one that</p> <p>13 was sold to Mr. Wright? It might not be exactly the</p> <p>14 -- well, it's not the one that burned up, but it --</p> <p>15 of a similar type of mower?</p> <p>16 MR. GRIMSLEY: Objection, form.</p> <p>17 THE WITNESS: It appears to be a Ryobi</p> <p>18 lawn tractor for sure, and I have no reason to</p> <p>19 believe it's not similar.</p> <p>20 Q. (By Mr. Shapiro) Okay. I want to turn to</p> <p>21 general questions about sales of lawn tractors.</p> <p>22 That's your category and has been for the</p> <p>23 last several years, right?</p> <p>24 A. Since 2011.</p> <p>25 Q. And in determining what products get sold</p> |

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| <p style="text-align: right;">Page 21</p> <p>1 in a Home Depot store, that's something that you have</p> <p>2 responsibility for, right?</p> <p>3 A. Yes.</p> <p>4 MR. GRIMSLEY: Objection.</p> <p>5 Q. (By Mr. Shapiro) And can you tell this</p> <p>6 jury how a company like Ryobi comes to Home Depot and</p> <p>7 pitches its product and gets it in your store?</p> <p>8 A. I have one clarification.</p> <p>9 Q. Yes, sir.</p> <p>10 A. I don't believe Ryobi is a company.</p> <p>11 Right? Ryobi's a brand. And so we would -- a</p> <p>12 manufacturer would come to the Home Depot with a</p> <p>13 brand in their portfolio.</p> <p>14 Q. Okay.</p> <p>15 A. And we have, you know, processes that we</p> <p>16 would call a line review to review what are the</p> <p>17 potential models of lawn tractor or whatever category</p> <p>18 we were looking at to evaluate what was -- what do we</p> <p>19 currently have in the lineup and was there something</p> <p>20 new we wanted to change.</p> <p>21 Q. The qualities of the product are something</p> <p>22 important to you in that category, right, in deciding</p> <p>23 whether to place one product as opposed to another,</p> <p>24 right?</p> <p>25 MR. GRIMSLEY: Objection to form.</p> | <p style="text-align: right;">Page 23</p> <p>1 Has that number changed a lot since 2005</p> <p>2 or 2006?</p> <p>3 A. Yes.</p> <p>4 Q. What was it around then or how has it</p> <p>5 changed?</p> <p>6 A. It has grown substantially --</p> <p>7 Q. Okay.</p> <p>8 A. -- since then. I wouldn't -- I wouldn't</p> <p>9 feel comfortable guessing at what the number was in</p> <p>10 2005.</p> <p>11 Q. I want to ask you if Home Depot agrees</p> <p>12 that all the products -- and the products would be</p> <p>13 lawn tractors or any other products it sells --</p> <p>14 should be -- should the products be fit for</p> <p>15 consumers' ordinary uses?</p> <p>16 MR. GRIMSLEY: Objection to form.</p> <p>17 THE WITNESS: I'm not sure what you mean</p> <p>18 by "ordinary uses."</p> <p>19 Q. (By Mr. Shapiro) Well, the ordinary use</p> <p>20 that the product is sold for, like a lawn tractor.</p> <p>21 What would you say a lawn tractor's</p> <p>22 ordinary use would be?</p> <p>23 A. Cutting grass.</p> <p>24 Q. Okay. Would you say that the product</p> <p>25 should be fit for the consumer's ordinary use of</p> |
| <p style="text-align: right;">Page 22</p> <p>1 THE WITNESS: Yeah. We look at a variety</p> <p>2 of factors, including, you know, what are the</p> <p>3 features and benefits of the equipment, who is</p> <p>4 the manufacturer, what is the brand and how</p> <p>5 relevant would it be to our store and our</p> <p>6 customer. All of those are part of the</p> <p>7 equation.</p> <p>8 Q. (By Mr. Shapiro) What about the</p> <p>9 reliability of the lawn tractor, is that something</p> <p>10 that you look at as a product category manager?</p> <p>11 Excuse me.</p> <p>12 A. We would certainly -- yes. We would</p> <p>13 certainly look at or expect reliability out of -- out</p> <p>14 of the lawn tractors that we -- that we select.</p> <p>15 Q. Okay.</p> <p>16 MR. SHAPIRO: That was a fail. Okay.</p> <p>17 Q. (By Mr. Shapiro) Okay. I have some</p> <p>18 questions about the products that you review and get</p> <p>19 ready for deciding whether to place into a Home Depot</p> <p>20 store.</p> <p>21 Now, how many Home Depot stores are there</p> <p>22 currently in the United States; do you know,</p> <p>23 approximately?</p> <p>24 A. 1970-ish.</p> <p>25 Q. That's pretty close. Okay.</p> | <p style="text-align: right;">Page 24</p> <p>1 cutting grass?</p> <p>2 MR. GRIMSLEY: Objection to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q. (By Mr. Shapiro) Should it be fit for the</p> <p>5 particular purposes it's designed for, which may be</p> <p>6 just cutting grass, mulching grass?</p> <p>7 MR. GRIMSLEY: Objection to form.</p> <p>8 Q. (By Mr. Shapiro) Any reason it wouldn't</p> <p>9 be fit for the particular purpose of that?</p> <p>10 A. We would -- yes. No. It should -- it</p> <p>11 should be fit for the purpose of cutting grass.</p> <p>12 Q. Okay. Now, again, we're talking</p> <p>13 specifically for lawn tractors, which when I say lawn</p> <p>14 tractor, in the industry that's a ride-on lawn mower,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. So if I say ride-on, I'm still saying lawn</p> <p>18 tractor, right?</p> <p>19 A. Yes.</p> <p>20 Q. Should they be fit to cut grass?</p> <p>21 A. Yes.</p> <p>22 Q. Should they be fit to mulch grass?</p> <p>23 A. Certain tractors kind of inherently have</p> <p>24 the mulching capability. Others have an attachment</p> <p>25 that is added to aid in mulching.</p> |

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| <p style="text-align: right;">Page 25</p> <p>1 Q. What's the attachment? Like a bagger?</p> <p>2 A. No. Actually it's called a mulch kit.</p> <p>3 Q. Okay. Do Ryobi lawn tractors, are they</p> <p>4 capable of mulching grass?</p> <p>5 MR. GRIMSLEY: Objection.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 Q. (By Mr. Shapiro) Okay. So we don't know</p> <p>8 the answer to this.</p> <p>9 Should they be fit to cut and mulch leaves</p> <p>10 and grass?</p> <p>11 MR. GRIMSLEY: Objection to form.</p> <p>12 THE WITNESS: Again, certain tractors are</p> <p>13 built to mulch; others are -- others are not</p> <p>14 without some other attachment to them.</p> <p>15 Q. (By Mr. Shapiro) Well, did you</p> <p>16 investigate whether the Ryobi lawn tractor that's the</p> <p>17 subject of this case could mulch leaves?</p> <p>18 MR. GRIMSLEY: Objection to form.</p> <p>19 THE WITNESS: I do not have an ability to</p> <p>20 know that.</p> <p>21 Q. (By Mr. Shapiro) From doing your inquiry,</p> <p>22 you didn't have an ability to find out?</p> <p>23 A. There were -- there are no records that I</p> <p>24 had access to about the specific, call it, features</p> <p>25 of the Ryobi lawn tractor.</p> | <p style="text-align: right;">Page 27</p> <p>1 assumptions --</p> <p>2 MR. SHAPIRO: Okay.</p> <p>3 MR. GRIMSLEY: -- that he's not able to</p> <p>4 answer --</p> <p>5 MR. SHAPIRO: That's a speaking objection.</p> <p>6 Okay? If you have --</p> <p>7 MR. GRIMSLEY: You asked me what the basis</p> <p>8 of my objection was and I gave it to you.</p> <p>9 MR. SHAPIRO: Right. But that's not form.</p> <p>10 Okay?</p> <p>11 MR. GRIMSLEY: I'll make my objections.</p> <p>12 You can bring them up later.</p> <p>13 MR. SHAPIRO: Okay.</p> <p>14 MR. GRIMSLEY: The objection is to form.</p> <p>15 MR. SHAPIRO: Okay.</p> <p>16 MR. GRIMSLEY: And I gave you the reason</p> <p>17 why.</p> <p>18 Q. (By Mr. Shapiro) So is there anything</p> <p>19 that tells retired persons they can or cannot operate</p> <p>20 ride-on lawn mowers in the Home Depot stores?</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. What about senior citizens, is there</p> <p>23 anything that says seniors cannot operate a ride-on</p> <p>24 lawn mower in your Home Depot stores?</p> <p>25 MR. GRIMSLEY: Objection to form.</p> |
| <p style="text-align: right;">Page 26</p> <p>1 Q. Okay. Well, in that category, you're</p> <p>2 still in the category of ride-on lawn mowers, right?</p> <p>3 A. Yes.</p> <p>4 Q. You work with it every day?</p> <p>5 A. Yes.</p> <p>6 Q. Is it acceptable user to be a retired</p> <p>7 person and operate a ride-on lawn mower?</p> <p>8 MR. GRIMSLEY: Objection to form.</p> <p>9 THE WITNESS: I would think -- I mean,</p> <p>10 there are -- I think the manufacturers set out</p> <p>11 criteria for the use of particular equipment.</p> <p>12 If a retired person met the use of the</p> <p>13 equipment, yes.</p> <p>14 Q. (By Mr. Shapiro) Well, I'm asking this</p> <p>15 right now. I'm saying you're the product category</p> <p>16 manager, at least in the last several years?</p> <p>17 A. Yes.</p> <p>18 Q. Is there anything in Home Depot sales or</p> <p>19 marketing that says retired persons cannot operate</p> <p>20 ride-on lawn mowers?</p> <p>21 MR. GRIMSLEY: Objection to form.</p> <p>22 THE WITNESS: Not that I'm aware of.</p> <p>23 MR. SHAPIRO: Just your objection to form,</p> <p>24 what is -- is the objection leading?</p> <p>25 MR. GRIMSLEY: No. You're making</p> | <p style="text-align: right;">Page 28</p> <p>1 THE WITNESS: Not that I'm aware of.</p> <p>2 Q. (By Mr. Shapiro) Okay. I want to --</p> <p>3 MR. GRIMSLEY: Richard, could you turn</p> <p>4 that back over, please, just a second?</p> <p>5 MR. SHAPIRO: Reason?</p> <p>6 MR. GRIMSLEY: I want to put a -- I'm</p> <p>7 going to object to you checking yes for the last</p> <p>8 two based upon his responses. That's my</p> <p>9 objection.</p> <p>10 Q. (By Mr. Shapiro) I want to ask about Home</p> <p>11 Depot knowledge, okay, and about Ryobi. Okay?</p> <p>12 I asked you earlier, Ryobi is sort of a</p> <p>13 brand that is sold in Home Depot stores, sort of like</p> <p>14 a captive brand?</p> <p>15 A. Yeah. I -- it is -- it is a private</p> <p>16 brand -- or is a proprietary brand of the Home Depot.</p> <p>17 Q. And so it's only sold in the Home Depot</p> <p>18 retail stores or online with Home Depot, right?</p> <p>19 A. In the US, that's my understanding.</p> <p>20 Q. Okay. And that relationship predated</p> <p>21 2000-two thousand -- I'm sorry, 2005-2006 when these</p> <p>22 lawn tractors were sold?</p> <p>23 MR. GRIMSLEY: Objection; asked and</p> <p>24 answered.</p> <p>25 THE WITNESS: I believe so, but I'm not</p> |

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|---|---|
| <p style="text-align: right;">Page 29</p> <p>1 certain of that.</p> <p>2 Q. (By Mr. Shapiro) Okay. And Home Depot</p> <p>3 sells a lot of other Ryobi products besides lawn</p> <p>4 tractors?</p> <p>5 A. We do.</p> <p>6 Q. And Ryobi has a relationship, a contract</p> <p>7 relationship with Husqvarna, doesn't it?</p> <p>8 A. I think in relates to this lawn tractor,</p> <p>9 my understanding is the Ryobi tractor was</p> <p>10 manufactured by Husqvarna.</p> <p>11 Q. Okay. And I want to ask you about</p> <p>12 Husqvarna. Is that a company you're familiar with in</p> <p>13 your product category?</p> <p>14 A. Yes.</p> <p>15 Q. And Husqvarna manufactures for other</p> <p>16 brands besides its own label Husqvarna, right?</p> <p>17 A. Yes.</p> <p>18 Q. You just told me one is Ryobi, right?</p> <p>19 A. Yes.</p> <p>20 Q. Well, Husqvarna also labels some of the</p> <p>21 tractors that it sells with its own label, right?</p> <p>22 A. Yes.</p> <p>23 Q. Has Home Depot sold Husqvarna tractors?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Okay. Has Husqvarna sold Craftsman?</p> | <p style="text-align: right;">Page 31</p> <p>1 somebody on a manufacturing side who's involved in</p> <p>2 the development, marketing, product roadmap of a</p> <p>3 product. That's not a role at the Home Depot.</p> <p>4 Q. Okay. Then we're going to mark this out</p> <p>5 and we're going to call it a category manager.</p> <p>6 Okay. That's your title, right?</p> <p>7 A. I'm a merchant, but it's the same.</p> <p>8 Q. Okay. So I'm asking these questions about</p> <p>9 your position and position like yours at Home Depot.</p> <p>10 And is it fair to say that you need to</p> <p>11 remain familiar with the products in your category?</p> <p>12 A. Yes.</p> <p>13 Q. And what about attending major trade shows</p> <p>14 to look at the products that are coming out that you</p> <p>15 might want to carry in Home Depot stores?</p> <p>16 MR. GRIMSLEY: Objection to form.</p> <p>17 THE WITNESS: We occasionally but not</p> <p>18 annually go to trade shows.</p> <p>19 Q. (By Mr. Shapiro) Does a representative of</p> <p>20 Home Depot go to the trade shows for the outdoor or</p> <p>21 lawn and garden or hardware market?</p> <p>22 A. Some -- some years, yes. Some years, no.</p> <p>23 Q. Isn't it important to keep up with the new</p> <p>24 brands to see what you want to carry in your Home</p> <p>25 Depot stores?</p> |
| <p style="text-align: right;">Page 30</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And does Husqvarna also brand</p> <p>3 Murray tractors?</p> <p>4 A. I was under the belief that Murray was</p> <p>5 actually a Briggs brand or an MTD brand, but it is</p> <p>6 possible that it's also been a Husqvarna brand.</p> <p>7 Q. What about Poulan or Poulan Pro?</p> <p>8 A. Yes, that is a Husqvarna brand.</p> <p>9 Q. Southern States?</p> <p>10 A. I'm not sure.</p> <p>11 Q. And Weed Eater?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. I want to ask you about Home</p> <p>14 Depot's awareness of product dangers or hazards in</p> <p>15 general.</p> <p>16 And you told me you're a category manager;</p> <p>17 is that what you're called?</p> <p>18 A. Sure, that works.</p> <p>19 Q. Is that similar to a product manager?</p> <p>20 A. No.</p> <p>21 Q. Okay. Give me the difference in -- are</p> <p>22 product managers under the category manager, or is</p> <p>23 that just something different?</p> <p>24 A. We don't -- I mean, product -- I guess</p> <p>25 when you say product manager, that sounds like</p> | <p style="text-align: right;">Page 32</p> <p>1 MR. GRIMSLEY: Objection, form.</p> <p>2 THE WITNESS: It is important to keep up</p> <p>3 with new brands. We may or may not need a trade</p> <p>4 show to -- to do that.</p> <p>5 Q. (By Mr. Shapiro) Can we agree that some</p> <p>6 Home Depot representatives attend the major trade</p> <p>7 shows?</p> <p>8 MR. GRIMSLEY: Objection to form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 Q. (By Mr. Shapiro) Okay. Now is it</p> <p>11 important to analyze product performance in the</p> <p>12 category; that is, every SKU, every product you have</p> <p>13 in your category, is it important to analyze the</p> <p>14 performance of the product?</p> <p>15 A. And when you say performance, you have</p> <p>16 parentheses. I just want to make sure I understand.</p> <p>17 Q. Sales and warranty claims, for example,</p> <p>18 would just be two items to look at under product</p> <p>19 performance.</p> <p>20 A. Sales would be -- would certainly be one.</p> <p>21 Warranty claims are not something that we have direct</p> <p>22 access to. We do look at return rates.</p> <p>23 Q. Yeah. Well, let's say returns instead. I</p> <p>24 think that's fair. Okay.</p> <p>25 So would that be a yes?</p> |

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1 A. Yes.

2 Q. Vigilant as to product hazard reports.

3 Now, in your category, you're selling lawn tractors,

4 and you're one of the largest retailers in the United

5 States, right?

6 A. Yes.

7 Q. Who sells more lawn tractors, you or

8 Lowe's?

9 A. Lowe's.

10 MR. GRIMSLEY: Objection to form.

11 Q. (By Mr. Shapiro) Okay. So you're one of

12 the top two. No?

13 A. Incorrect. No.

14 Q. Okay. Who are the top sellers of lawn

15 tractors in the retail market in the United States?

16 MR. GRIMSLEY: Objection to form and

17 relevance.

18 THE WITNESS: My belief is Sears and

19 Lowe's are the top two.

20 Q. (By Mr. Shapiro) Okay. Is Home Depot

21 third?

22 A. If you count the dealers as a group, no,

23 we're not.

24 Q. Oh. Where does Home Depot fit?

25 A. Fourth.

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1 Q. Okay. Is it important to remain vigilant

2 as to product hazard reports in the category?

3 A. When you say product hazard reports, what

4 does that mean?

5 Q. Any hazard that comes to the knowledge of

6 Home Depot or the industry as a whole that sell lawn

7 tractors.

8 MR. GRIMSLEY: Objection, form.

9 THE WITNESS: We would rely on the

10 manufacturer to understand the implications of

11 hazard reports. That's not an expertise that

12 Home Depot necessarily has.

13 Q. (By Mr. Shapiro) Well, do you pay

14 attention to product hazard reports of lawn tractors?

15 MR. GRIMSLEY: Objection to form.

16 Q. (By Mr. Shapiro) I mean, if you're

17 selling a product in your stores and you're reading

18 industry publications and there's reports that apply

19 to a category that you carry, would that be relevant

20 to you?

21 MR. GRIMSLEY: Objection, form.

22 THE WITNESS: I would expect that if a

23 report came to my attention or the manufacturer

24 brought it to my attention, that would be

25 something we would become aware of.

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1 Q. (By Mr. Shapiro) I mean, it could affect

2 your sales, couldn't it?

3 If the industry reports some problem with

4 one of the tractors that you sell, it can make the

5 sales drop. Wouldn't that be relevant to you as a

6 category manager?

7 MR. GRIMSLEY: Objection, form.

8 THE WITNESS: Yes.

9 Q. (By Mr. Shapiro) So what's our answer

10 here; is it yes or no? Would you say you don't want

11 to be vigilant or you do want to be vigilant?

12 MR. GRIMSLEY: I'm going to object to the

13 form and the use of "hazard reports," since he's

14 already testified that he's not sure he even

15 knows what that means.

16 THE WITNESS: Yeah. I --

17 Q. (By Mr. Shapiro) I'm just going to check

18 one or the other. Just tell me which one. Do you

19 want to say you --

20 MR. GRIMSLEY: I'm going to -- same

21 instruction to the witness. He doesn't have to

22 check one or the other. That's your choice. He

23 doesn't have to check one or the other.

24 THE WITNESS: Yeah, I don't understand --

25 Q. (By Mr. Shapiro) Okay.

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1 A. -- enough about what you mean by hazard

2 reports to understand --

3 Q. Okay. Let's call this hazard reports,

4 safety issues, anything that can affect whether a

5 product you're selling is hazardous or has a safety

6 issue.

7 A. If it -- if a -- if -- so I guess

8 typically we would expect that to become, you know --

9 first to be known by the manufacturer. To the extent

10 the manufacturer makes us aware of it and there's an

11 action required on the part of Home Depot, yes, we

12 would want to engage on that.

13 Q. So I guess what I'm asking is: I

14 understand that you think it would primarily fall to

15 the manufacturer; is that your first answer? I

16 mean --

17 A. Yes.

18 Q. But secondarily, since it can affect your

19 sales, would Home Depot or you as a product manager

20 want to be vigilant about any hazards or safety

21 issues relating to the products you sell in your

22 stores?

23 A. If it came to my attention, yes.

24 Q. Okay. I'm going to check yes. Okay.

25 Now, the CPSC is the Consumer Product

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| <p style="text-align: right;">Page 37</p> <p>1 Safety Commission. You're familiar with what that 2 stands for, right? 3 A. I am. 4 Q. Okay. What about reviewing consumer 5 product safety recalls in your category, which we're 6 going to say includes lawn tractors; is that 7 something that a product category manager person 8 would be interested in knowing? 9 A. No. 10 Q. Okay. Why not? 11 A. Unless it related specifically to a 12 product that I was selling that required recall 13 activity, that's not something I've encountered other 14 than that circumstance. 15 Q. Well -- okay. Let me go -- let me skip to 16 this one. 17 Do you read industry magazines and 18 websites that pertain to lawn tractors? 19 A. I look at some web e-mails, yes, and I 20 certainly go to websites, yes. 21 Q. Is there an industry publication or 22 magazine that you like to read every month relating 23 to the lawn tractor industry? 24 A. Actually, most of what I consume is 25 digital. And so there's a daily update from OPEI,</p> | <p style="text-align: right;">Page 39</p> <p>1 of recalls that are put out in the category. If 2 there was a headline that said something about a 3 recall, then it might be included. But I'm not 4 aware of a place where there's a download of 5 CPSC recalls. 6 Q. (By Mr. Shapiro) So the answer here, 7 reviewing Consumer Product Safety Commission recalls 8 in your category, is no? 9 A. Yes. Correct, the answer would be no. 10 Q. And you do read industry websites, right? 11 A. Yes. 12 Q. Okay. Okay. I want to ask some questions 13 now about the lawn tractor that's involved in the 14 case, the model we talked about. 15 In some industries, Mr. Seymour, there are 16 events that are called "never events," and it's a 17 phrase that means, as I understand it, it should 18 never happen. Okay? Like in the medical field, 19 there's never events that they never want to take 20 place in an operating room. Okay? 21 MR. GRIMSLEY: I'm going to object to the 22 side bar. 23 Q. (By Mr. Shapiro) And I have a question, 24 and my question relates to this picture here 25 (indicating). Okay?</p> |
| <p style="text-align: right;">Page 38</p> <p>1 and that would be an example of something I look at. 2 Q. What does that stand for, sir? 3 A. Outdoor Power Equipment Industry. 4 Q. Okay. Do they put out a subscription 5 publication every week or month, or is it just an 6 online website? 7 A. It's a -- it's a daily e-mail during the 8 business week. 9 Q. Okay. Do you have any magazines you get 10 on a periodic basis, or are hard copies kind of 11 trending down? 12 A. I actually don't have any magazines that I 13 get. 14 Q. All right. Well, those websites, do they 15 report if the Consumer Product Safety Commission has 16 announced a recall in your category that you cover? 17 A. Not that I've seen. 18 Q. Are you telling me that no recall 19 information is in your publication that you get in 20 the lawn tractor industry? That is, if the CPSC 21 recalls lawn tractors in the category you work in, 22 it's not going to be listed in the regular website 23 reports that you get? 24 MR. GRIMSLEY: Object to form. 25 THE WITNESS: I don't see any listing</p> | <p style="text-align: right;">Page 40</p> <p>1 And I want to ask you if, as a product 2 category manager, you would ever want to see a lawn 3 tractor fire-engulfed like it is in this picture that 4 a consumer is using in a normal way to mow a back 5 yard? 6 MR. GRIMSLEY: Objection to form. 7 THE WITNESS: I would never want to see a 8 lawn tractor engulfed in flame, no. 9 (Plaintiff's Exhibit-5 was marked for 10 identification.) 11 MR. SHAPIRO: I'm going to mark this as 12 No. 5. 13 (Plaintiff's Exhibit-6 was marked for 14 identification.) 15 Q. (By Mr. Shapiro) And I want to show you 16 what I've marked as No. 6. It is a picture that 17 shows a back yard. And I want to ask you: From a 18 perspective of someone in your category that sells 19 lawn tractors, would there be anything out of the 20 norm in this backyard as far as someone taking a lawn 21 tractor and wanting to mow that backyard? 22 MR. GRIMSLEY: Objection to form. He's 23 not here to give opinions. If you want to ask 24 him some facts, factual questions, he's here to 25 answer those. He's not here to answer --</p> |

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| <p style="text-align: right;">Page 41</p> <p>1 MR. SHAPIRO: That's a factual question.</p> <p>2 MR. GRIMSLEY: No, it's not. It calls for</p> <p>3 an opinion.</p> <p>4 MR. SHAPIRO: I asked the witness --</p> <p>5 MR. GRIMSLEY: He's not been designated as</p> <p>6 an expert. He's been designated as a</p> <p>7 representative of Home Depot. He's not here to</p> <p>8 give opinion questions -- or opinion answers.</p> <p>9 MR. SHAPIRO: Okay. Your objection is</p> <p>10 noted.</p> <p>11 Q. (By Mr. Shapiro) Is there anything that</p> <p>12 you see unusual in this picture of a back yard that</p> <p>13 would make it a back yard that couldn't be mowed with</p> <p>14 a lawn tractor?</p> <p>15 MR. GRIMSLEY: Same objection. He's not</p> <p>16 here to give opinion in this case.</p> <p>17 Q. (By Mr. Shapiro) You can answer.</p> <p>18 A. Okay. It's a -- it's a back yard that is</p> <p>19 flattish with some trees and obstacles to contend</p> <p>20 with. It doesn't look unusual to me as a consumer.</p> <p>21 (Plaintiff's Exhibit-7 was marked for</p> <p>22 identification.)</p> <p>23 Q. (By Mr. Shapiro) Okay. Number 7 is a</p> <p>24 picture. And I was just -- do you have any reason to</p> <p>25 ever have known Frank Wright, who I'll represent is</p> | <p style="text-align: right;">Page 43</p> <p>1 people that work under you also?</p> <p>2 A. I actually don't.</p> <p>3 Q. Oh, okay. So do you yourself engage in</p> <p>4 some sort of an inspection of -- I mean how -- how do</p> <p>5 you --</p> <p>6 MR. GRIMSLEY: Object to form.</p> <p>7 Q. (By Mr. Shapiro) -- analyze a new product?</p> <p>8 MR. GRIMSLEY: Objection to form.</p> <p>9 THE WITNESS: So, you know, we meet with</p> <p>10 the manufacturers to understand their proposals</p> <p>11 around a product. Much of our diligence is</p> <p>12 centered around the manufacturer and their track</p> <p>13 record in the industry, their evidence of</p> <p>14 capabilities, their track record with the Home</p> <p>15 Depot, and we expect them to kind of bring</p> <p>16 quality products to the table.</p> <p>17 Q. (By Mr. Shapiro) So you're relying on the</p> <p>18 manufacturer to have a safe product pretty much,</p> <p>19 right?</p> <p>20 MR. GRIMSLEY: Objection to form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 Q. (By Mr. Shapiro) So like is there a -- so</p> <p>23 if Ryobi or a different company that's in your stores</p> <p>24 now comes to you with a new product that's it's a new</p> <p>25 model you're going to stick in the stores because you</p> |
| <p style="text-align: right;">Page 42</p> <p>1 the person depicted in this picture?</p> <p>2 A. I have not.</p> <p>3 Q. Okay.</p> <p>4 A. I do not know him.</p> <p>5 MR. GRIMSLEY: Thank you, sir.</p> <p>6 Q. (By Mr. Shapiro) Okay. I want to ask you</p> <p>7 questions about this lawn tractor that was sold to</p> <p>8 Mr. Wright. We talked about the sales receipt</p> <p>9 earlier.</p> <p>10 Do you know if HD did any inspections of</p> <p>11 this model Ryobi lawn tractor before sales began in</p> <p>12 Home Depot stores?</p> <p>13 A. So I wasn't here in 2005 or in that time</p> <p>14 frame, so I can't speak to that particular lawn</p> <p>15 tractor. I could speak generally to the process.</p> <p>16 Q. So the process that at least you engage in</p> <p>17 now if you're taking on a new product category, do</p> <p>18 you or one of your representatives with HD inspect a</p> <p>19 model before? You know, once you're getting ready to</p> <p>20 accept it for sales in your stores --</p> <p>21 A. When you say inspect, what do you mean by</p> <p>22 that?</p> <p>23 Q. Is there any type of analysis of the</p> <p>24 product that you or your -- I didn't ask you how many</p> <p>25 people work for you, but I take it you have some</p> | <p style="text-align: right;">Page 44</p> <p>1 like it, do you have at Home Depot a group or</p> <p>2 inspectors that get a model of the product before it</p> <p>3 goes into your stores to check it carefully?</p> <p>4 A. I can't speak throughout the Home Depot.</p> <p>5 Q. Right.</p> <p>6 A. In my product category, we rely on the</p> <p>7 manufacturers for inspection/testing of product.</p> <p>8 Q. So I'm going to say no because you rely on</p> <p>9 the manufacturer.</p> <p>10 MR. GRIMSLEY: I'm going to object that he</p> <p>11 says -- you've put up the Ryobi lawn tractor</p> <p>12 HDK. He said he does not know what occurred</p> <p>13 with that lawn tractor -- with that model lawn</p> <p>14 tractor. So I think this is -- all of these</p> <p>15 checks or whatever you're going to put up there</p> <p>16 are objectionable.</p> <p>17 MR. SHAPIRO: Okay. Thank you for the</p> <p>18 speaking objection.</p> <p>19 Q. (By Mr. Shapiro) So as far as you know,</p> <p>20 in 2005 or 2006, your predecessor was who in that</p> <p>21 role?</p> <p>22 A. I believe at that time it was Glenn</p> <p>23 Ubertino.</p> <p>24 Q. Glenn Ubertino. Is he now no longer with</p> <p>25 Home Depot or did he switch roles?</p> |

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| <p style="text-align: right;">Page 45</p> <p>1 A. He is no longer with the Home Depot.</p> <p>2 Q. I mean, you took over from him and --</p> <p>3 A. I'm three people after him.</p> <p>4 Q. Okay. But I mean, you know your process</p> <p>5 you engage in now and that's what you're basing your</p> <p>6 answer on here, right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So we understand that, for the</p> <p>9 record. Okay?</p> <p>10 MR. GRIMSLEY: Objection still stands.</p> <p>11 Q. (By Mr. Shapiro) You weren't there in</p> <p>12 2006, right?</p> <p>13 A. I was not, not in the capacity I am today.</p> <p>14 Q. Okay. Now, but you're speaking as a</p> <p>15 company representative, and so I'm asking you about</p> <p>16 safety tests before the sales began of the Ryobi lawn</p> <p>17 tractor.</p> <p>18 Based on the inquiry you made, do you know</p> <p>19 if there were any safety tests done by Home Depot as</p> <p>20 opposed to the manufacturer itself?</p> <p>21 MR. GRIMSLEY: For what?</p> <p>22 Q. (By Mr. Shapiro) Before the tractor was</p> <p>23 sold in Home Depot stores?</p> <p>24 MR. GRIMSLEY: Are you talking about the</p> <p>25 Ryobi tractor?</p> | <p style="text-align: right;">Page 47</p> <p>1 you describe what you mean by that?</p> <p>2 Q. Like the mechanics or the way it works.</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. Home Depot doesn't get involved with that.</p> <p>6 Q. You would expect Ryobi or the</p> <p>7 manufacturer, or whoever we're talking about, to do</p> <p>8 that, right?</p> <p>9 A. We would expect the manufacturer to do</p> <p>10 that, yes.</p> <p>11 Q. Now product revenue from sales, once the</p> <p>12 product starts selling -- this seems pretty basic,</p> <p>13 but Home Depot collects the money. And how do you</p> <p>14 pay manufacturers? They place their product in your</p> <p>15 store. Is it a 30-day? 90-day? How do you pay the</p> <p>16 manufacturers once you sell products?</p> <p>17 MR. GRIMSLEY: Objection to form,</p> <p>18 relevance.</p> <p>19 THE WITNESS: We -- we receive an invoice</p> <p>20 from the manufacturer when we submit notice to</p> <p>21 them that we have key rec'd the product, we have</p> <p>22 basically received the product into our store --</p> <p>23 Q. (By Mr. Shapiro) Yes, sir.</p> <p>24 A. -- and then there are -- they submit an</p> <p>25 invoice and we pay against that invoice over some</p> |
| <p style="text-align: right;">Page 46</p> <p>1 MR. SHAPIRO: Yes. These are all about</p> <p>2 the Ryobi tractor.</p> <p>3 THE WITNESS: I do not know if there were</p> <p>4 safety tests performed on the Ryobi tractor.</p> <p>5 Given our current process, I would expect that</p> <p>6 the manufacturer would have been responsible for</p> <p>7 the safety tests.</p> <p>8 Q. (By Mr. Shapiro) Okay. And under your</p> <p>9 current structure, Home Depot doesn't do its own</p> <p>10 independent safety test; it relies on what the</p> <p>11 manufacturer has done; is that fair?</p> <p>12 A. Yes. That's correct.</p> <p>13 Q. Okay. And so I'm saying no here. I</p> <p>14 understand you said you weren't there. But based on</p> <p>15 your process now, you don't have any reason to think</p> <p>16 it was different then, do you?</p> <p>17 A. I don't have any reason to believe it was</p> <p>18 different then.</p> <p>19 MR. GRIMSLEY: Same objection.</p> <p>20 Q. (By Mr. Shapiro) Now what about design</p> <p>21 review before sales, is -- I don't have a blank over</p> <p>22 there.</p> <p>23 But is there an internal HD design review</p> <p>24 of the design of the lawn tractor besides --</p> <p>25 A. When you say design of lawn tractor, can</p> | <p style="text-align: right;">Page 48</p> <p>1 period of time as -- varies by manufacturer.</p> <p>2 Q. I know some of this is proprietary. I</p> <p>3 don't want exactitude here.</p> <p>4 But for every lawn tractor Home Depot</p> <p>5 sells, you're looking to have a certain markup or</p> <p>6 percentage and then you're paying the</p> <p>7 manufacturer/distributor a part of that sales</p> <p>8 revenue?</p> <p>9 A. We pay them for receipt of the product,</p> <p>10 and then we sell the product, yes.</p> <p>11 Q. Okay. So, in essence, are you paying them</p> <p>12 before you sell?</p> <p>13 A. In some cases that's possible, yes.</p> <p>14 Q. Okay.</p> <p>15 A. We pay upon receipt.</p> <p>16 Q. Okay. Okay. I want to show you a</p> <p>17 document which is a Consumer Product Safety</p> <p>18 Commission document.</p> <p>19 (Plaintiff's Exhibit-8 was marked for</p> <p>20 identification.)</p> <p>21 Q. (By Mr. Shapiro) And I've put in front of</p> <p>22 you what we've marked as No. 8. And I wanted to ask</p> <p>23 you --</p> <p>24 MR. GRIMSLEY: Before you ask your</p> <p>25 question, I'm going to note an objection to this</p> |

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| <p style="text-align: right;">Page 49</p> <p>1 document and its relevance. It's an ongoing 2 objection. 3 MR. SHAPIRO: Okay. 4 MR. GRIMSLEY: Thank you. 5 MR. SHAPIRO: Understood. I'll give you 6 an ongoing objection to the CPSC documents. 7 Q. (By Mr. Seymour) Mr. Seymour, I'm showing 8 you a document, which in the -- near the top left, it 9 says November 16, 2001. And it's a Consumer Product 10 Safety Commission letterhead notice. And it 11 announces a recall, it says, of 35,000 lawn tractors; 12 and it mentions brands here: Poulan Pro, Weed Eater, 13 Husqvarna, and I guess it's -- I don't know if it's 14 Jonsered or Jones. 15 A. Jonsered. 16 Q. Jonsered. It shows some pictures. 17 Were you familiar with this 2001 recall 18 for any reason? 19 A. No. 20 Q. So do you see that it includes a Husqvarna 21 manufacturer ID number on here? 22 A. Yes. 23 Q. And do you see it mentions fuel tanks on 24 these lawn tractors had cracking? 25 A. Yes.</p> | <p style="text-align: right;">Page 51</p> <p>1 the top left. Do you see that? 2 A. Yes. 3 Q. And it mentions Husqvarna lawn tractors, 4 5,280 units, and it mentions a hazard of the lawn 5 tractors can develop abrasions on the fuel tank 6 because of the fuel line clamp's location. This can 7 result in a fuel tank leak, which could pose a fire 8 hazard to consumers. It shows a picture of a type of 9 tractor. 10 Did you make inquiry whether Home Depo had 11 any familiarity with this recall from 2004? 12 A. I do not know if Home Depot had 13 information on this recall. 14 Q. In order to look into that, Mr. Seymour, 15 what did you do to inquire? Because, you know, we 16 listed recalls -- information about recalls in our 17 deposition notice. 18 MR. GRIMSLEY: And I am going to state for 19 the record that we have responded to the notice 20 and incorporate that response. 21 MR. SHAPIRO: Okay. 22 Q. (By Mr. Shapiro) So just generally, was 23 Home Depot aware of this recall involving Husqvarna 24 lawn tractors at any time after 2004? 25 A. I'm not sure if Home Depot is aware. I am</p> |
| <p style="text-align: right;">Page 50</p> <p>1 Q. And it says, a little higher up, The tank 2 in the lawn tractor can crack and leak fuel, posing a 3 fire hazard. Do you see that? 4 A. I do. 5 Q. And it involved 35,000 lawn tractors. 6 Now, do you know whether any of these lawn tractors 7 under this 2001 recall were sold in Home Depot 8 stores? 9 A. I do not. 10 Q. Okay. I'm done with that exhibit. 11 Here's an exhibit I'm going to mark as 12 No. 9. And I have a question. Let me get the copy 13 for you. 14 (Plaintiff's Exhibits-9 and 10 were marked 15 for identification.) 16 MR. GRIMSLEY: Thank you. Do you have 17 another copy? 18 MR. SHAPIRO: Somewhere. I don't know 19 where it's gone. 20 MR. GRIMSLEY: Here. 21 MR. SHAPIRO: Did I give you two? Maybe I 22 gave him two. Yeah, there it is. 23 Q. (By Mr. Shapiro) On this document we 24 marked as 9, it has a Consumer Product Safety 25 Commission heading, and it says December 6, 2004, on</p> | <p style="text-align: right;">Page 52</p> <p>1 not aware. 2 Q. Okay. Well, I understand you weren't in 3 your category back then in '04. But how would you 4 make inquiry to determine if your predecessor or 5 persons or agents had notice of this recall? 6 A. So I -- the recall process is one, as a 7 merchant, not my area of expertise. So I would defer 8 that to other parts of the organization that are 9 better versed in recalls and Consumer Product Safety 10 Commission issues. 11 Q. So like -- but to get ready for today, did 12 you make inquiry or did you find if anyone was 13 familiar with this? 14 A. No. 15 Q. Okay. I will mark that as No. 9. 16 I think I asked you this, but let me just 17 go ahead and mark this. 18 (Plaintiff's Exhibit-10 was marked for 19 identification.) 20 Q. (By Mr. Shapiro) This is just 21 highlighting the same recall. Is it true that 22 this -- the hazards -- one of the hazards noted -- 23 outlined in the recall was that there could be a fuel 24 tank leak which could pose a fire hazard to 25 consumers?</p> |

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| <p style="text-align: right;">Page 53</p> <p>1 MR. GRIMSLEY: Objection to form.</p> <p>2 THE WITNESS: Yes.</p> <p>3 Q. (By Mr. Shapiro) This particular recall</p> <p>4 covered a 42-inch cutting deck; is that correct?</p> <p>5 A. Yes, that's what it says here.</p> <p>6 Q. And it was a Husqvarna. Husqvarna was the</p> <p>7 only manufacturer involved in this recall, correct?</p> <p>8 MR. GRIMSLEY: Objection, form.</p> <p>9 THE WITNESS: That's what the highlight</p> <p>10 says.</p> <p>11 Q. (By Mr. Shapiro) Okay. And it lists two</p> <p>12 model numbers, which I'm not going to recite but</p> <p>13 they're listed there, right?</p> <p>14 A. Yes.</p> <p>15 Q. And so they were 42-inch cutting deck,</p> <p>16 gas-powered mowers made by Husqvarna, right?</p> <p>17 A. Yes.</p> <p>18 Q. And the subject mower which was involved</p> <p>19 in this case, do you know the generalities of whether</p> <p>20 it was 42-inch or not?</p> <p>21 MR. GRIMSLEY: Objection to form;</p> <p>22 objection, relevance.</p> <p>23 THE WITNESS: From the SKU description we</p> <p>24 have, I don't know.</p> <p>25 Q. (By Mr. Shapiro) Okay. Do you know what</p> | <p style="text-align: right;">Page 55</p> <p>1 know whether Home Depot would have been aware. As I</p> <p>2 mentioned, the recall process is outside of my</p> <p>3 expertise.</p> <p>4 Q. Okay. But as a company representative,</p> <p>5 did you make inquiry of other people with the company</p> <p>6 to answer the question as to whether Home Depot or</p> <p>7 its agents got notified about this recall notice,</p> <p>8 which I was going to ask about some particulars, but</p> <p>9 it involved Husqvarna products, right?</p> <p>10 A. It appears to involve Husqvarna products.</p> <p>11 I'm not -- I'm not aware of whether Home Depot had</p> <p>12 notice of this or not.</p> <p>13 Q. Okay. On this particular recall which</p> <p>14 I've handed you, this is a pretty big recall, isn't</p> <p>15 it, because it affected 174,000 lawn tractors?</p> <p>16 A. It affects 174,000 lawn tractors.</p> <p>17 Q. And the brands that are covered here down</p> <p>18 the left column are Craftsman -- you said Home Depot</p> <p>19 has carried Craftsman products before, correct?</p> <p>20 A. No, sir.</p> <p>21 Q. Oh, I'm sorry. Oh, that's right. You</p> <p>22 were answering a question about --</p> <p>23 A. I'd like to get you another pointer, too.</p> <p>24 Okay?</p> <p>25 Q. Thank you for correcting me.</p> |
| <p style="text-align: right;">Page 54</p> <p>1 this means in the model?</p> <p>2 A. I would -- I would imagine that means it's</p> <p>3 a 42-inch cutting diameter.</p> <p>4 Q. And from your research you did -- I don't</p> <p>5 know if we talked about this earlier -- did you</p> <p>6 determine whether Husqvarna contract-manufactured the</p> <p>7 lawn tractor that Ryobi sold to Mr. Wright in this</p> <p>8 case?</p> <p>9 MR. GRIMSLEY: Objection to form.</p> <p>10 THE WITNESS: I believe that Husqvarna</p> <p>11 manufactured the Ryobi lawn tractors, yes.</p> <p>12 MR. SHAPIRO: Okay.</p> <p>13 (Plaintiff's Exhibit-11 was marked for</p> <p>14 identification.)</p> <p>15 Q. (By Mr. Shapiro) Let me show you what</p> <p>16 I've marked as No. 11, which at the top has a</p> <p>17 Consumer Product Safety Commission title. On the</p> <p>18 left, it says, July 11, 2006. And ask you if you</p> <p>19 made inquiry as to whether Home Depot was familiar</p> <p>20 with this Consumer Product Safety Commission recall</p> <p>21 notice of July 2006?</p> <p>22 A. No.</p> <p>23 Q. You didn't make inquiry as to whether Home</p> <p>24 Depot was aware or --</p> <p>25 A. I -- I'm not -- I'm not aware. I don't</p> | <p style="text-align: right;">Page 56</p> <p>1 That's a Sears product usually, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Husqvarna-branded products, you</p> <p>4 said you weren't sure if --</p> <p>5 A. I'm not sure whether Home Depot has sold</p> <p>6 Husqvarna.</p> <p>7 Q. Murray products have been sold in Home</p> <p>8 Depot before, haven't they?</p> <p>9 A. I believe Murray products have been sold</p> <p>10 in Home Depot before.</p> <p>11 Q. And on the next page, Poulan and Poulan</p> <p>12 Pro, have those been sold in Home Depot?</p> <p>13 A. Products of that brand have been sold in</p> <p>14 Home Depot.</p> <p>15 Q. And what about Southern States or Weed</p> <p>16 Eater?</p> <p>17 A. Southern States, I'm not sure but would</p> <p>18 believe not. Weed Eater, yes.</p> <p>19 Q. Okay. So --</p> <p>20 A. Those may not be lawn tractors, for what</p> <p>21 it's worth.</p> <p>22 Q. Okay. So -- but you were pointing out you</p> <p>23 might sell other products by that --</p> <p>24 A. Correct, other -- other product</p> <p>25 categories, yes.</p> |

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| <p style="text-align: right;">Page 57</p> <p>1 Q. So this particular recall, which -- let me</p> <p>2 hand you what's being marked right now as No. 12,</p> <p>3 which is just a highlight of some of the language on</p> <p>4 that recall.</p> <p>5 (Plaintiff's Exhibit-12 was marked for</p> <p>6 identification.)</p> <p>7 Q. (By Mr. Shapiro) In this July 2006</p> <p>8 recall, the hazard identified was: The fuel line on</p> <p>9 these lawn tractors can separate from the fuel tank</p> <p>10 outlet. If this occurs, fuel will spill out, posing</p> <p>11 a fire hazard, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And the recall mentions 886 reports of</p> <p>14 fuel lines have separated, didn't it?</p> <p>15 A. It does, yes.</p> <p>16 Q. And reports of fires related to the issue?</p> <p>17 MR. GRIMSLEY: Are you asking if that's</p> <p>18 what it says?</p> <p>19 MR. SHAPIRO: Yes, sir.</p> <p>20 THE WITNESS: Yes, that's what it says.</p> <p>21 MR. SHAPIRO: Okay. 11 and 12.</p> <p>22 THE WITNESS: Do I need to give these</p> <p>23 back?</p> <p>24 (Plaintiff's Exhibit-13 was marked for</p> <p>25 identification.)</p> | <p style="text-align: right;">Page 59</p> <p>1 object to the relevance --</p> <p>2 THE WITNESS: I do not know.</p> <p>3 MR. GRIMSLEY: -- and the admissibility of</p> <p>4 this document.</p> <p>5 MR. SHAPIRO: Okay.</p> <p>6 (Plaintiff's Exhibit-14 was marked for</p> <p>7 identification.)</p> <p>8 Q. (By Mr. Shapiro) I'm marking No. 14 here,</p> <p>9 which shows an underside of a fuel tank. And it</p> <p>10 shows what we've been calling in other depositions, I</p> <p>11 guess, a nipple or a barb or a fuel tank outlet.</p> <p>12 In being the category manager in this</p> <p>13 field, do you ever look at the fuel line connection</p> <p>14 to the fuel tanks on these lawn tractors?</p> <p>15 A. No, I do not.</p> <p>16 Q. Do you know what clamping methods the</p> <p>17 manufacturers use to hook fuel lines to fuel tanks on</p> <p>18 lawn tractors?</p> <p>19 A. No, I do not.</p> <p>20 Q. Okay. So the selection of the type of</p> <p>21 clamp, for example, that would hold a fuel line onto</p> <p>22 a fuel tank, would that be something that Home Depot</p> <p>23 would ever specify to a lawn tractor manufacturer?</p> <p>24 A. No.</p> <p>25 Q. Would you expect the lawn tractor</p> |
| <p style="text-align: right;">Page 58</p> <p>1 Q. (By Mr. Shapiro) Let me show you what I'm</p> <p>2 marking as No. 13. Okay? There's pictures here</p> <p>3 showing a side-by-side view of what appear to be a</p> <p>4 couple of fuel tanks.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Well, first of all, on the lawn tractors</p> <p>8 that Home Depot sells, does Home Depot -- if the</p> <p>9 consumer/customer wants a replacement fuel tank, does</p> <p>10 Home Depot sell any replacement parts like that?</p> <p>11 A. No.</p> <p>12 Q. Is that something the consumer has to go</p> <p>13 to the manufacturer to get?</p> <p>14 A. The manufacturer or a dealer, yes.</p> <p>15 Q. Okay. Do you have any awareness from your</p> <p>16 inquiry and appearing as a company representative</p> <p>17 today as to whether what's shown here on the left</p> <p>18 side, this tank 185534, was the original tank in the</p> <p>19 Ryobi tractor that we were talking about as the</p> <p>20 subject tractor in this case?</p> <p>21 A. I do not know.</p> <p>22 Q. Okay. Do you know anything about the</p> <p>23 updated tank that we show here on the right side of</p> <p>24 this page?</p> <p>25 MR. GRIMSLEY: Objection to form, and</p> | <p style="text-align: right;">Page 60</p> <p>1 manufacturer to select the clamping method for a fuel</p> <p>2 line?</p> <p>3 A. Yes.</p> <p>4 (Plaintiff's Exhibit-15 was marked for</p> <p>5 identification.)</p> <p>6 Q. (By Mr. Shapiro) I'm showing you what</p> <p>7 we're going to mark as No. 15. And there's a graphic</p> <p>8 here and the same -- an image of a fuel tank outlet.</p> <p>9 These round protrusions that are being</p> <p>10 pointed to here, what do you call those?</p> <p>11 A. I wouldn't have any language for them. I</p> <p>12 see where it says call them barbs. I would have</p> <p>13 called them -- I'm not sure.</p> <p>14 Q. Okay. So you don't have a title for that.</p> <p>15 Okay.</p> <p>16 A. I don't.</p> <p>17 Q. Okay. Let me mark and show you what we're</p> <p>18 going to identify as No. 16.</p> <p>19 (Plaintiff's Exhibit-16 was marked for</p> <p>20 identification.)</p> <p>21 Q. (By Mr. Shapiro) This is another image</p> <p>22 from the underside of a fuel tank, and in this one,</p> <p>23 there's a separate black-color piece here.</p> <p>24 And do you have any awareness of whether</p> <p>25 manufacturers put this type of fuel tank outlet on</p> |

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| <p style="text-align: right;">Page 61</p> <p>1 tractors that you have been familiar with as a 2 product category manager? 3 MR. GRIMSLEY: Objection to form. 4 THE WITNESS: I'm not aware of whether 5 that exists on lawn tractors at this time. 6 Q. (By Mr. Shapiro) So whether it was Ryobi 7 or whether it was a different brand, you're just not 8 familiar with this type of data or information? 9 A. This is a -- 10 MR. GRIMSLEY: Objection. 11 THE WITNESS: -- mechanical detail of a 12 lawn tractor that I wouldn't have an opinion on 13 as a category manager. 14 (Plaintiff's Exhibit-17 was marked for 15 identification.) 16 Q. (By Mr. Shapiro) I'm marking as No. 17 17 another picture, and we have a title on it, Tank barb 18 comparison. And there's an inset here showing just 19 the outlet from one tank, and then you can see 20 there's a black, below it, other fuel tank outlet. 21 Do you have any opinion as to which type 22 of outlet is better on a lawn tractor between the two 23 that are being shown? 24 MR. GRIMSLEY: Objection. He's not here 25 to give opinions.</p> | <p style="text-align: right;">Page 63</p> <p>1 THE VIDEOGRAPHER: Back on the record at 2 9:19 a.m. 3 Q. (By Mr. Shapiro) So, Mr. Seymour, we were 4 just covering -- let's finish covering these recalls. 5 And you mentioned to me that in 2006 when 6 this last recall was issued you had not yet taken 7 over as product category manager in the lawn tractor 8 area, right? 9 A. Correct. 10 Q. But you made inquiry and you're telling us 11 you're not sure whether the person in your role or 12 any other agents of Home Depot found out about the 13 recalls that affected the 174,000 mowers in 2006? 14 A. Correct. I'm not aware. 15 Q. And the answer is the same with regard to 16 the 2004 recall that involved, I think, a far less 17 number of mowers? 18 A. Correct. 19 Q. Are there circumstances where recalls 20 occur in your category that Home Depot does take 21 action to notify customers? 22 A. I'm in -- I can speak from my experience 23 on a recall. We're notified by the manufacturer of 24 the recall and then work with the manufacturer on the 25 appropriate actions coming out of the recall.</p> |
| <p style="text-align: right;">Page 62</p> <p>1 MR. SHAPIRO: Well, he's a product 2 category manager. 3 MR. GRIMSLEY: I don't care what he is. 4 He's not here to give opinions in this case. 5 He's not designated as an expert. 6 Q. (By Mr. Shapiro) Do you have any 7 experience, as a product category manager, as to the 8 methods of fuel tank outlets on tanks that are used 9 by manufacturers? 10 A. I do not. 11 Q. Okay. So we covered the top part here of 12 this chart, and then I just covered with you recall 13 information in 2001, 2004, and 2006. 14 And each of those recalls that I covered 15 with you, can we agree that they all covered fuel 16 tank issues or fuel line connections to fuel tanks? 17 MR. GRIMSLEY: Objection to form. 18 THE WITNESS: Yes. 19 MR. GRIMSLEY: Continuing objection on 20 relevance. 21 MR. SHAPIRO: Let's take a quick break. 22 I'm almost done. 23 THE VIDEOGRAPHER: Off the record at 9:10 24 a.m. 25 (Recess from 9:10 a.m. to 9:19 a.m.)</p> | <p style="text-align: right;">Page 64</p> <p>1 Q. Because some recalls involve the customers 2 returning products, right, or getting a new part? 3 MR. GRIMSLEY: Objection to form. 4 THE WITNESS: I'm not sure about that, 5 actually. Yes, I mean, I think typically 6 there's an option for the customer to have 7 remediation done to the product. 8 Q. (By Mr. Shapiro) And what would 9 remediation mean? 10 A. Something fixed on the product. 11 Q. Okay. And usually who would pay the cost 12 of a recall, if there's a cost and a new part or 13 something repaired? 14 A. The manufacturer would pay. 15 Q. Would Home Depot ever take on that cost? 16 A. I'm not aware of a circumstance where 17 that's true. 18 Q. Okay. I just want to ask questions about 19 what, if any, necessary steps were taken after these 20 industry recalls. I talked about '01, '04, and '06. 21 Now -- 22 MR. GRIMSLEY: Before we get started, I 23 want my objection noted as to relevance of any 24 of these recalls. 25 MR. SHAPIRO: I understand.</p> |

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| <p style="text-align: right;">Page 65</p> <p>1 Q. (By Mr. Shapiro) Did Home Depot request</p> <p>2 that Ryobi warn consumers after -- let me just talk</p> <p>3 about the 2004 or 2006 recalls.</p> <p>4 Did Home Depot, based on your inquiry, ask</p> <p>5 Ryobi to warn consumers about the fuel leaks on any</p> <p>6 products that might affect Ryobi's sales?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. So I'm just going to say we don't</p> <p>9 know here on the yes or no.</p> <p>10 Did Home Depot request that Husqvarna warn</p> <p>11 consumers -- we established earlier Husqvarna was the</p> <p>12 contract manufacturer of the mower for Ryobi, right?</p> <p>13 A. Yes.</p> <p>14 Q. Did Home Depot request that Husqvarna warn</p> <p>15 any consumers that were purchasers of Ryobi mowers</p> <p>16 that might have been affected by the recalls?</p> <p>17 MR. GRIMSLEY: Objection to form.</p> <p>18 There's --</p> <p>19 THE WITNESS: I don't --</p> <p>20 MR. GRIMSLEY: Let me finish my objection.</p> <p>21 There's no indication in this case at all that a</p> <p>22 Ryobi lawn tractor was involved in the recall.</p> <p>23 So all of these questions are not only</p> <p>24 objectionable with regard to the recalls</p> <p>25 themselves being relevant, but you've indicated,</p> | <p style="text-align: right;">Page 67</p> <p>1 the recall in 2004, the fuel tank part, was the same</p> <p>2 part that was included on any Ryobi mowers that were</p> <p>3 sold in Home Depot?</p> <p>4 A. I don't know.</p> <p>5 MR. SHAPIRO: Okay. Those are all my</p> <p>6 questions.</p> <p>7 MR. GRIMSLEY: Thank you. I don't have</p> <p>8 any questions.</p> <p>9 THE VIDEOGRAPHER: This concludes the</p> <p>10 deposition at 9:24 a.m.</p> <p>11 (Deposition concluded at 9:24 a.m.)</p> <p>12 [Orders given to reporter as stated: For</p> <p>13 Mr. Shapiro, original, electronic PDF and PTX;</p> <p>14 return original exhibits with transcript copy.</p> <p>15 For Mr. Grimsley, electronic, black-and-white</p> <p>16 pictures. Orders expedited by e-mail.]</p> <p>17 (Pursuant to Rule 30(e) of the Federal</p> <p>18 Rules of Civil Procedure and/or O.C.G.A.</p> <p>19 9-11-30(e), signature of the witness has been</p> <p>20 waived.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 66</p> <p>1 which is --</p> <p>2 MR. SHAPIRO: Okay.</p> <p>3 MR. GRIMSLEY: -- completely not true,</p> <p>4 that a Ryobi tractor was involved in the recall.</p> <p>5 I think that's just completely unfair to this</p> <p>6 witness.</p> <p>7 MR. SHAPIRO: Okay. Thank you. That's</p> <p>8 not an objection that ought to be made to that</p> <p>9 question.</p> <p>10 Q. (By Mr. Shapiro) So you don't know the</p> <p>11 answer to this one, either?</p> <p>12 A. Correct. I do not know.</p> <p>13 Q. Okay. Did Home Depot warn any customers</p> <p>14 itself, by examining any sales records, as to whether</p> <p>15 Ryobi products could have been affected by either the</p> <p>16 '04 or the '06 recall?</p> <p>17 MR. GRIMSLEY: Objection to form.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 Q. (By Mr. Shapiro) And did Home Depot issue</p> <p>20 any notices to any stores or on the web to any of its</p> <p>21 customer that bought Ryobi mowers?</p> <p>22 A. I don't know.</p> <p>23 Q. Okay. Do you know whether the -- in 2004,</p> <p>24 the recall that we talked about earlier that involved</p> <p>25 fuel tanks or leaks, do you know whether the part on</p> | <p style="text-align: right;">Page 68</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 STATE OF GEORGIA:</p> <p>4 COUNTY OF FULTON:</p> <p>5 I hereby certify that the foregoing</p> <p>6 transcript was taken down, as stated in</p> <p>7 the caption, and the questions and answers</p> <p>8 thereto were reduced to typewriting under</p> <p>9 my direction; that the foregoing pages 1</p> <p>10 through 67 represent a true, complete, and</p> <p>11 correct transcript of the evidence given</p> <p>12 upon said hearing, and I further certify</p> <p>13 that I am not of kin or counsel to the</p> <p>14 parties in the case; am not in the regular</p> <p>15 employ of counsel for any of said parties;</p> <p>16 nor am I in anywise interested in the result</p> <p>17 of said case.</p> <p>18 This, the 27th day of August, 2014.</p> <p>19</p> <p>20 <i>Deborah P. Longoria</i></p> <p>21</p> <p>22 DEBORAH P. LONGORIA, CCR B-1557, RPR</p> <p>23</p> <p>24</p> <p>25</p> |

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COURT REPORTER DISCLOSURE

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2
3 Pursuant to Article 8.b. of the Rules and
4 Regulations of the Board of Court Reporting of the
5 Judicial Council of Georgia which states: "Each court
6 reporter shall tender a disclosure form at the time
7 of the taking of the deposition stating the
8 arrangements made for the reporting services of the
9 certified court reporter, by the certified court
10 reporter, the court reporter's employer, or the
11 referral source for the deposition, with any party to
12 the litigation, counsel to the parties or other
13 entity. Such form shall be attached to the
14 deposition transcript," I make the following
15 disclosure:

16
17 I am a Georgia Certified Court Reporter. I am
18 here as a representative of Esquire Solutions. Esquire
19 Solutions was contacted to provide court
20 reporting services for the deposition. Esquire
21 Solutions will not be taking this deposition under
22 any contract that is prohibited by O.C.G.A.
23 9-11-28(c).

24
25 Esquire Solutions has no contract/agreement to
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